IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

FRIDAY, THE 29TH JUNE 2007 / 8TH ASHADHA 1929

WP(C).No. 1480 of 2007(A)

AGAINST THE ORDER IN EP 25/2001 IN
OS.220/1994 of PRINCIPAL SUB COURT,ATTINGAL
.....

PETITIONER:

MASOODA, S/O.ABDUL REHUMAN,
LILA VILASAM, PAZHAYAKUNNUMEL VILLAGE AND
DESOM.

BY ADV. SRI.R.S.KALKURA
SRI.M.S.KALESH
SRI.HARISH GOPINATH
SRI.V.VINAY MENON
SRI.KIRAN SANKAR

RESPONDENTS:
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1. ABDUL SALAM, S/O.MOHAMED KUNJU,
MAJIDA MANZIL, PAPPALA, PAZHAYAKUNNUMEL DESOM,
REPRESENTED BY HIS POWER OF ATTORNEY HOLDER
MOHAMMED KUNJU AYSHA BEEVI, KODIYIL VEEDU,
THATTATHUMALA, PAZHAYAKUNNUMAL VILLAGE.

2. ANANDAN RAGHAVARAN, `ANAND',
KARICHAYIL, AVANANVANCHERRY VILLAGE.

3. KRISHNAN SARASAMMA, `ANAND'
KARICHAYIL, AVANANVANACHERRY VILLAGE.

BY

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 29/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

EXT. P1	**TRUE COPY OF THE EXECUTION PETITION NO.25/01**
EXT.P2	**TRUE COPY OF THE ORDER DTD.29.9.01 IN OS 220/94 IN EP 25/01.**
EXT.P3	**TRUE COPY OF THE JUDGMENT DTD.23.3.04 IN CRP 2093/02.**
EXT.P4	**TRUE COPY OF THE CERTIFICATE ISSUED BY DR.V.V.RADHAKRISHNAN, ASSOCIATE PROFESSOR OF CARDIOLOGY, MEDICAL COLLEGE HOSPITAL, TRIVANDRUM DTD.16.12.06 ALONG WITH THE PRESCRIPTON.**
EXT.P5	**TRUE COPY THE VARIOUS PRESCRIPTON AND OTHER DOCUMENTS INDICATING THAT THE PETITIONER'S WIFE IS UNDER TREATMENT FOR CANCER WITH REGIONAL CANCER CENTRE, TRIVANDRUM.**
EXT.P6	**TRUE COPY OF THE MEDICAL BILLS.**
EXT.P7	**TRUE COPY OF THE ORDER ON THE FILE OF SUBORDINATE JUDGE'S COURT, ATTINGAL IN EP 25/01 IN OS 220/94.**

[True copy]

P.A. to Judge.

M.N. KRISHNAN, J.

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W.P.C. NO. 1480 OF 2007

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Dated this the 29th day of June, 2007.

J U D G M E N T

This writ petition is preferred against the order of arrest of the first judgment debtor in E.P.25/01 in O.S.220/94. The decree is one for realisation of about Rs.3 lakhs due from the defendants. The execution is launched in the year 2001. After considering all the materials the court below found that the first judgment debtor is having a pension of more than Rs.3,000/- which may come to Rs.5,000/- by this time and therefore ordered arrest of the person for realisation of the decree amount.

2. The contention before the executing Court was that he was also getting a sum of Rs.40,000/- from some business in spices and in support of the said contention PWs.2 and 3 were examined and to controvert that evidence DW2 and DW3 were also examined. The Court rightly found that oath against oath should be considered and viewed in favour of the judgment debtor and therefore found that the decree holder has not succeeded in proving that he was having any business. The only source of income that is left with the judgment debtor is his pension. He is

a 74 year old man. He has produced documents before this Court to show that his wife is suffering from cancer and she is at a terminal stage and therefore it requires much amount. So also he has produced some documents to show that he is also a regular visitor of the hospital and therefore he requires the amount for treatment. It is also to be stated at this stage that an amount of Rs.5,000/- is so a nominal amount and one would find it difficult to make both ends meet now. It is on the basis of this, the matter has to be adjudicated.

The learned counsel appearing for the writ petitioner has cited before me a decision of the Apex Court reported in **Jolly Geroge Varghese v. Bank of Cochin (1980 KLT 375)**. A reading of the said judgment would reveal that Section 51 of CPC embodies the same principle as that which is embodied in Article 11 of the International Covenant on Civil and Political Rights. "The international law frowns on holding the debtor's person in civil prison, as hostage by the Court. The simple default to discharge the decree, is not enough. There must be some element of bad faith beyond mere indifference to pay, some deliberate or recusant disposition in the past or alternately, current means to pay the decree or a substantial part of it." Just because a person

is having some pension and he along with his wife who are constant visitors of hospital and that the condition of the wife who is suffering from cancer which is critical, one cannot hold that an amount of Rs.5,000/- in 2007 is an income which will show that the judgment debtor has the sufficient means to pay the debt and he is willfully refusing or neglecting to pay the amount. So I am satisfied that mere receipt of pension under the circumstances discussed above will not be sufficient to hold that he is having sufficient means to pay the decree debt and he is deliberately and intentionally avoiding payment. This is also reiterated in the decision reported in **Xavier v. Canara Bank Ltd. (1969 KLT 927)**. Therefore, the order under attack is set aside and the E.P. is dismissed.

The writ petition is disposed of accordingly.

M.N. KRISHNAN, JUDGE.

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